

Appl. No. : 10/614,650  
Filed : July 7, 2003

## REMARKS

In response to the Office Action transmitted August 25, 2009, and in conjunction with the Request for Continued Examination filed herewith, please reconsider the above-captioned application in light of the above amendments and the following remarks.

Claim 21 has been amended in this Response. Thus, Claims 10, 21, 22, 24, and 34-41 remain pending and under consideration. Claims 2-4, 6, 8, 9, 11-15, 17-20, and 25-33 remain pending but withdrawn from consideration.

### Nash Does Not Teach or Suggest The Recited Structure

The Examiner rejected all of the claims under 37 C.F.R. § 102(b) or 37 C.F.R. § 103(a) as being unpatentable over U.S. Patent No. 6,007,563 to Nash. Applicants have made a clarifying amendment to Claim 21, which Applicants submit overcomes the disagreement over the meaning of the word “permanently”. Applicants contend that Nash does not teach or suggest the limitations of the claims.

Claim 21 as amended is reproduced below:

21. A device for at least partially closing an opening in tissue, comprising:

an elongate body comprising a first lumen having a first distal opening and a second lumen having a second distal opening, **the lumens arranged so that a longitudinal space is defined between the first and second distal openings;**

a first connector adapted to provide access to the first lumen;

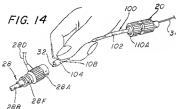
a second connector adapted to provide access to the second lumen;  
and

a wound cover member releasably connected to the elongate body at the first distal opening;

wherein **the device is configured so that, during advancement towards an opening in tissue and during operation, the first distal opening is permanently maintained at a position distal of the second distal opening,** and the first and second lumens do not communicate with one another; and

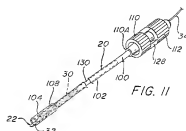
wherein the wound cover member and the elongate body are configured so that when the wound cover member is released from the first distal opening of the elongate body at or adjacent an opening in tissue, the **wound cover member is wholly disconnected** from the device.

Nash discloses an instrument 20 in which an anchor member 32 is held within a rigid bypass tube 104 that is attached to the distal end of an elongated tube 102 (see Fig. 11; col. 7, ll. 41-56). In use, a sheath 28 is advanced into a blood vessel (see col. 4, ll. 28-30). Aligned tubes 104 and 102 are later pushed into the proximal end 28A of the sheath 28 (see Fig. 14; col. 11, ll. 13-

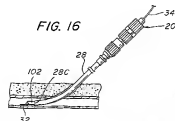


14), and advanced through the sheath until the anchor member 32

and distal end of the tube 102 are pushed out of the distal end 28C of the sheath 28 (see Fig. 16; col. 11, ll. 17-25).



Importantly, Nash's instrument 20 and sheath 28 are completely separate devices that move separately and without restriction relative one another. Also, Nash's sheath 28 is advanced into a vessel long before the sheath 28 and instrument 20 are ever used together. Further, the distal end of the instrument 20 (tube 104 & 102) is proximal the distal end 28C of the sheath 28 for the entire time that the tube 104/102 is being advanced through the sheath 28.



Nash does not teach or suggest all of the limitations of Claim 21. For example, Nash's combination of instrument 20 and sheath 28 are NOT "configured so that, during advancement towards an opening in tissue and during operation, the first distal opening is permanently maintained at a position distal of the second distal opening".

Since Nash does not teach or suggest all of the limitations of Claim 21, Applicants respectfully request that the Examiner withdraw the rejection of this claim and the claims that depend therefrom.

#### Dependent Claims Recite Additional Patentable Subject Matter

As noted above, since Claim 21 is in condition for allowance, the claims that depend therefrom are also in condition for allowance. Nevertheless, Applicants contend that these claims recite additional patentable subject matter.

For example, as discussed above, Nash's tube 104/102 is moved relative to the sheath 28 when the tube is advanced distally through the sheath, which is opposite the limitations of Claim

10, which recites that the elongate body has first and second portions that are “rigidly connected to one another so as to always move as a single elongate unit.”

In rejecting Claim 10 the Examiner cited col. 7, ll. 42-48 of Nash (reproduced below).  
Examination of this excerpt of text shows

that the tube 104 is a rigid part of tube 102,  
but is not connected to the sheath 28.

Instead, tube 104 is rigid so that it can fit  
through valve 28A to enter the sheath 28.

may exist. 40  
In accordance with a preferred embodiment of this invention the outside diameter of the tubular carrier 100 is 8 French. The distal end of the tube 102 includes a rigid, e.g., stainless steel, sleeve or bypass tube 104 mounted thereon, to enable it to be inserted through a conventional hemostasis 45  
valve 28A (FIGS. 12-14) forming a portion of the introducer sheath 28, through the sheath, and out the distal end thereof into the artery 26. The distal end of the flexible tube 102 necks down into a generally hemicylindrical configuration

Since Nash does not teach or suggest all of the limitations of Claim 10 and the rest of the dependent claims, Applicants respectfully request that the rejection of these claims be withdrawn.

Withdrawn Claims Should Be Returned to Consideration

Claims 2-4, 6, 8, 9, 11-15, 17-20 and 25-33 currently stand withdrawn from consideration as being directed to a nonelected invention. Each of these claims depends from independent Claim 21, which Applicants contend is now in condition for allowance. Since Claim 21 is allowable, Applicants respectfully request that the Examiner return these claims into consideration, as they are now in condition for allowance as well.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

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Co-Pending Applications of Assignee

Applicants wish to draw the Examiner's attention to the following co-pending applications of the present application's assignee.

<b>Docket No.</b>	<b>Serial No.</b>	<b>Title</b>	<b>Filed</b>
LOMAU.159A	10/935,415	DRESSING DELIVERY SYSTEM FOR INTERNAL WOUNDS	09/07/04

Conclusion

Applicants respectfully submit that the rejections and objections set forth in the outstanding Office Action are inapplicable to the present claims and specification. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections and objections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 02/25/10 \_\_\_\_\_

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